IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/08/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN
and
THE HON'BLE MR.JUSTICE S.K.KRISHNAN

Civil Miscellaneous Appeal No. 1028 of 2001
and
CMP.Nos:17837, 6481 to 6483 of 2003

New India Assurance Company
Vijayawada ..Appellant

-Vs-

1. Nagarathinamma
2. Jayalakshmi
3. Govindan
4. Desayya Naidu
5. N.Rmadoss ..Respondents

Civil Miscellaneous Appeals filed against the judgment and decree dated 30.3.1990 made in MCOP No.273 of 1983 on the file of the II Additioanl Sub Judge, (Motor Accidents Claims Tribunal), Chengalpattu.

!For appellant :: Mr.K.Padmanabhan
for M/s.Kurian Associates

^For respondents: Mr.A.N.Viswanatha Rao
for Respondents 1 to 3

:JUDGMENT

E.PADMANABHAN,J.,

The above appeal has been preferred by the insurer challenging the award and decree dated 30th March, 1990 made in MCOP.No.273 of 1983 on the file of the Motor Accident Claims Tribunal (II Additional Sub Judge) Chengalpattu.

2. With the consent of either side, the appeal itself is taken up for final disposal. Heard Mr.K.Padmanabhan, for M/s.Kurian and Associates for the appellant and Mr.A.M.Viswanatha Rao, for respondents 1 to 3, the 4th and 5th respondent not appearing.

3. Respondents 1 to 3 herein instituted MCOP.No: 273 of 1983 on the file of the Motor Accident Claims Tribunal, Chengalpattu against the appellant and respondents 4 and 5 herein claiming a compensation of Rs.1 lakh. The first claimant is the widow of Ravindran. The second and third claimants being the mother and father of the deceased. On the date of death the deceased was aged 21 years. The first claimant was aged 19 years, second claimant was aged 38 years and third claimant was aged 45 years. The deceased Ravindran died in the accident that occurred on 6.9.1982 at 10.30 a.m. In the KavarapettaiSathiavedu Road.

4. According to the claimants, the deceased Ravindran was riding in a bicycle at 10.30 a.m., on 6.9.1982 on Kavarapettai-Sathiavedu Road. At that time, the lorry bearing registration No. ATM-6543 driven rashly and negligently dashed against the deceased Ravindran and he died. It is contended that the accident has been caused by the rash and negligent driving of the lorry by its driver. The deceased succumbed to the injuries as he was knocked down by the lorry belonging to the first respondent insured with the second respondent insurance company. The deceased was a Postal Carrier attached to Kavarapettai Sub Post Office.

5. The second respondent-insurer of the vehicle filed a counter pointing out that particulars of insurance coverage such as policy number has not been furnished. Hence the second respondent is not liable to pay the compensation. The second respondent contested the claim both on the ground of negligence as well as on the question of quantum of compensation claimed. It is also pointed out that the driver has been acquitted by the criminal court. In the Additional counter it is contended by the insurer that the vehicle is found to be insured in the name of one K.R.P.Enterprises, Sri Ramakrishna Boiled Rice Mill, Vayulur, Andhra Pradesh In Vijayawada Division, the insured owner of the vehicle has not been impleaded as respondent and this is fatal. The Insurance Policy in respect of the lorry was transferred in favour of the third respondent owner of the vehicle only on 7.9.198 2 with a transfer endorsement on payment of Rs.5/= towards transfer fee. It is contended that there is no privity of contract and there was no insurable interest for the third respondent on the date of the accident, as the third respondent came into picture only on 7.9.198 2. Unless it is established that the actual insured was in possession of the vehicle on the date of accident and that the driver was under its employment, the second respondent-insurer is not liable to answer the present claim. The second respondent prayed for dismissal of the claim petition.

6. Before the Tribunal below the claimants marked Exs.P.1 to P.4, while the respondents marked Exs.R.1 to R.4.The claimants examined two witnesses and the respondent examined two witnesses on his side. The Tribunal below framed the following three points for consideration:-
(i) Whether the accident has been caused by the rash and negligent driving of the respondent's lorry?
(ii) Whether the claimant is entitled to any compensation?
(iii)Whether the second respondent insurer is liable to pay compensation?

7. On the first issue the Tribunal below while accepting the evidence of P.W.2, recorded a finding that the accident has been caused by the rash and negligent driving of the lorry driver. On the second point, the tribunal held that the claimants are entitled to compensation of Rs.1 lakh, in all under various heads. On the third point, the tribunal held that the respondent including the insurer is liable to pay the compensation with interest at 12% and cost. The Tribunal apportioned the compensation among the claimants and the apportionment being RS.60,000/= to the first claimant, widow of the deceased, Rs.30,000/= to the mother of the deceased and Rs.10,000/= to the third claimant the father of the deceased.

8. Challenging the said judgement and award the insurer alone has come before this court contending that the insurer is not liable to pay compensation as there is no valid insurance on the date of accident.

9. The learned counsel appearing for the appellant while fairly stated that he is not challenging the finding of the tribunal below with respect to negligence as well as quantum of compensation. The learned counsel for the appellant also fairly sated that there is no dispute with respect to the relationship between the deceased and the three claimants. The learned counsel for the appellant mainly contended that the appellant herein, the insurer, is not liable to pay compensation as there was no valid contract on the date of accident as the policy has been renewed in favour of the third respondent a transferee after the accident and therefore the insurer is not liable and if at all it is the owner of the vehicle who has to pay. The liability of the insurer alone is the point in issue and therefore we have to consider the said controversy. The points that arise for consideration are:
(i) Whether the appellant - insurer is liable to pay compensation awarded by the tribunal below to the claimants?

(ii) Whether there was a valid insurance coverage of the vehicle on the date of the accident and
(iii)To what relief, if any?

10. Ex.P.1 is the Xerox copy of the RC Book. Ex.P.2 is the Insurance certificate. Ex.P.4 is the Insurance Policy. It is the main contention of the insurer/appellant that there was no existing contract of insurance between the the appellant and the respondent No.3, the owner of the lorry on the date of accident. According to the insurer M/s.K.R.P.Enterprises was the owner of the lorry, who has insured the ill-fated lorry. On 6.9.1982, the date of accident, the owner of the lorry was M/s.K.R.P.Enterprieses. The accident took place on 6.9.1982. Only on 7.9.1982 a day after the accident, the third respondent has sought for transfer of the insurance policy in his favour being the transferee of the lorry. It is pointed out by the appellant that on the date of accident there was no valid insurance in respect of the lorry owned by the third respondent, a transferee. As there was no contract of insurance between the third respondent and the insurance company, the insurer is not liable to pay the compensation is the only and substantial contention.

11. The third respondent, owner of the lorry on the date of the accident was examined as R.W.3. It is the evidence of R.W.3, the owner of the

lorry that the said lorry was owned by Ms.K.R.P.Enterprises, that on 25.8.1982 the lorry was transferred in his name as seen from Ex.R.1 copy of RC Book. According to R.W.3, there was a valid insurance and therefore the insurer is liable to pay the compensation.

12. R.W.3 further deposed that RC Book and the Insurance policy were handed over to the Insurer for transfer of the insurance in his name much earlier to the accident. Ex.R.2 is the insurance policy. Therefore the second respondent insurance company is liable to pay the compensation. The evidence of R.W.3 has been analysed by the tribunal below. The lorry has been transferred in favour of R.W.3 on 25.8 .1982 as seen from the entries in Ex.R.1. Ex.R.2 is the insurance policy issued in favour of the third respondent Ramadoss who is the admitted owner on the date of accident. On the date of accident there was valid insurance as has been admitted by the second respondent insurance company. But the second respondent contended that on 7.9.1982 alone the vehicle was insured and therefore in respect of the accident that occurred on 6.9.1982 there being no valid contract of insurance, the insurer is not liable to indemnify the loss, nor it is liable to pay the compensation.

13. The evidence of R.W.3 has been accepted by the tribunal below and his evidence would show that R.W.3 has applied for transfer of policy on 25.8.1982. But the transfer of policy has been made only on 7.9.1982. R.W.2 representing the insurer deposed that the application for transfer of policy was submitted only after the accident and that the vehicle owner did not disclose about the accident and had there been a disclosure, the policy would not have been issued. In this respect the tribunal below after considering the evidence of R.Ws 1 and 2, disbelieved R.W.2 and held that there was a valid insurance coverage in respect of the vehicle involved in the accident on the date of accident and therefore the appellant insurer is liable to pay the compensation. The tribunal below relied upon the pronouncement of Supreme Corut in Dharman and another Vs. Srinivasan and others reported in 1989 (I) Law Weekly, page 315.

13. In the light of the said finding, the tribunal below passed an award against all the respondents while holding that the insurer who is the appellant herein is liable to pay the compensation.

14. In this appeal, the learned counsel appearing for the appellant contended that the accident took place on 6.9.1982. The policy was transferred only on 7.9.1982 and therefore the insurer is not liable as there was no valid contract of insurance between the third respondent, owner of the vehicle and the appellant, the insurance company.

15. Mr.Viswanatha Rao, learned counsel appearing for the contesting respondents-claimants contended that there is a valid insurance and therefore the insurer is liable and at any rate the insurance company should be directed to pay the entire amount of compensation as assessed and if at all liberty be given to the insurer to proceed against the owner of the lorry.

16. All the points raised in this appeal could be considered together. There is no dispute about the dates mentioned above. The findings recorded by the tribunal below that is the third respondent-owner of the lorry has applied for transfer of insurance policy earlier in point of time. But the communication of transfer was issued only a day after the accident and it is a continuance of insurance cover. It is also pointed out by the counsel for the respondent that the transfer of the insurance policy also cover the lorry which was issued prior to the accident and transferred in favour of the third respondent-owner of the lorry who is the transferee long prior to the date of accident. The findings of the tribunal below deserve to be sustained on facts.

17. The counsel appearing for the appellant as well as the second respondent referred to various pronouncements in support of their respective contentions. The counsel of the appellant also relied upon the pronouncement of a Full Bench of this court in Saroja and 3 others Vs. Gopal and 3 others reported in 1999 (II) CTC 37 and contended that the appellant insurance company cannot be fastened with the liability unless the intimation of transfer and sale of vehicle is given to the insurer. According to the appellant the insurance policy lapsed and therefore no liability could be fastened on the appellant.

18. Per contra, reliance is placed upon the Division Bench Judgment of this court in Dharman and others Vs. N.C.Srinivasan and others, reported in 1990 ACJ 27, where the Division Bench held that the insurance company cannot avoid its liability against third party by taking a plea that the policy had come to an end on the transfer of the vehicle before the accident and that such a defence is not available to the insurer under section 96(2) as against third party claimants. The Division Bench also held that it could be open to the insurer to work out its remedies against the parties concerned under section 93(3) proviso or under section 96(4) of the Act. Very many pronouncements were relied upon by either side.

19. In our considered view, it may not be necessary to refer to all the pronouncements on which the counsel on either side placed reliance. There is no dispute that the vehicle was transferred in favour of the third respondent herein prior to the accident and the transfer has also been effected prior to the accident and the transfer of the vehicle has also been intimated to the insurer prior to the accident. But the insurer has sent the intimation regarding transfer of policy a day after the accident and on that score the insurer seeks to avoid the liability. The case relied upon the counsel for the appellant as well as the counsel for the respodnent relates to a case where the transfer of the vehicle has not been reported to the registering authority as well as to the insurer within the time prescribed. That is not the case here and therefore it is not necessary to refer to the said pronouncements relied upon by either side.

20. In the present case on facts transfer has been intimated not only to the registering authority, but also to the appellantinsurer within the period stipulated and the insurer has taken time to effect transfer of the policy and factually after the accident only transfer of insurance policy has

been intimated, but it is a continuation of policy and not a new policy. The tribunal below rightly held that the transfer has been intimated to the insurer well in time. But the transfer of policy has been intimated a day after the accident. It is not in dispute that that the vehicle was covered by a policy of insurance on the date of accident, but it was issued in favour of the transferor. Immediately after transfer the transferee has also intimated about the transfer remitted the charges for continuation of the policy. Mere communication of intimation of transfer of policy, a day after the accident will not absolve the insurer as the insurer has already been intimated, collected the fees for the transfer of the policy well before the accident. In such cases the insurance company cannot avoid the liability in respect of third party claims.

21. On the facts of the case it has to be pointed out that the liability of the insurer to third party absolved, nor the insurer could contend that it is the owner of the vehicle alone is liable and that the insurer is absolved of its liability. Not only the transfer has been intimated and effected before the date with respect to the registration of certificate, but transfer of the policy has also been applied within the time stipulated by intimating the transfer and necessary fee has been paid in this respect which is prior to the accident and the communication of transfer as to the transfer of policy has been issued only after the date. On this score, the insurer cannot avoid its liability.

22. Madhya Pradesh High Court in Umed Chand Golcha Vs. Dayaram and others, reported in 2001 ACJ 1996 held thus:-
5. The award was challenged by the claimant on various grounds mentioned in the memo of appeal. It may be pertinent to record that the Full Bench in National Insurance Co Ltd., V. Kans Ram, 2000 ACJ 405 (MP), on reference made by the Division bench of this court by order dated 23.9.1997 passed in Umed Chand Golcha V. Dayaram, M.A.,BNo.192 of 1996, held that the insurance policy remains effective in respect of third party risks but not in respect of transferee risks, even if there has been absence of application/intimation as stipulated under section 103-A of the Act and law laid down in Balwant Singh V. Jhannubai, 1980 ACJ 126 (MP) and Sabir Hussain V. Maya Bai, 197 ACJ 1258 (MP) and similar other decision,l was no more good law. Therefore, the claim of the insurance company that it was not liable to pay compensation awarded by the Tribunal for the reasons that on transfer of vehicle without intimation to it, policy ceased to exist and there was no privity of contract between the company and the transferee, stands rejected."

23. In the above decision, the Division Bench took the view that in respect of third party risks the insurance policy also remains effective even in such circumstances and that the claim of the insurance company that it was not liable to pay compensation has been repelled. The case on hand is identical in all respects.

24. The Supreme Court in Complete Insulations (P) Ltd., Vs. New India Assurance Co., Ltd., reported in 1996 ACJ 65 while considering the scope of Section 103-A of the Old Act and Section 157 of the Motor Vehicles Act, 1988 held thus:-

"10. There can be no doubt that the said Chapter provides for compulsory insurance of vehicles to cover third party risks. Section 146 forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that Chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to property of a third party, i.e., a person other than the insured. This is clear from Section 147 (1)(b)(i) which clearly refers to damage to any property of a third party and not damage to the property of the insured himself. And the limit of liability fixed for damage to property of a third party is rupees six thousand only as pointed out earlier. That is why even the Claims Tribunal constituted under section 165 is invested with the jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to any property of a third party so arising, or both Here also it is restricted to damage to third party property and not the property of the insured. Thus, the entire Chapter XI of the New Act concerns third party risks only. It is, therefore, obvious that insurance is compulsory only in respect of third party risks since section 146 prohibits the use of a motor vehicle in a public place unless there is in relation thereto a policy of insurance complying with the requirements of Chapter XI. Thus, the requirements of that Chapter are in relation to third party risks only and hence the fiction of " Section 157 of the new Act must be limited thereto. The certificate of insurance to be issued in the prescribed form (see Form 51 prescribed under rule 141 of the Central Motor Vehicles Rules, 1989) must, therefore, relate to third party risks. Since the provisions under the new Act and the old Act in this behalf are substantially the same in relation to liability in regard to third parties, the National Consumer Disputes Redressal Commission as right in the view it took based on the decision in Kondaiah's case, 1986 ACJ 1 (AP), because the transferee insured could not be said to be a third party qua the vehicle in question. It is only in respect of third party risks that section 1 57 of the new Act provides that the certificate of insurance together with the policy of insurance described therein shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred. If the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the new Act and the realm of contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle. In the present case, since there was no such agreement and since the insurer had not transferred the policy of insurance in relation thereto to the transferee, the insurer was not liable to make good the damage to the vehicle. The view taken by the National Commission is, therefore, correct."

25. The Supreme Court in Rikhi Ram and another Vs. Smt.Sukhrania and others reported in 2003 (1) Supreme 1000 laid down that on the transfer of a vehicle to a transferee, the liability of the insurer does not cease so far as the third party victim is concerned even if the owner or purchaser does not give any intimation as required under section 103-A of Motor Vehicles Act, 1939. In this respect, the Apex Court held thus:-

"4. A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus,it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risks. i.e. Owner of the vehicle; property(vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party and not to the property. Section 95(5) of the Act runs as follows:-
"Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover the case of that person or those classes of person."

5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who use the vehicle shall insure the vehicle in respect of his separate use.
Xx xx xx xx xx
7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/ victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

26. In the light of the above pronouncement in Rikhi Ram and another Vs. Smt.Sukhrania and others reported in 2003 (1) Supreme 1000 the appellant-insurer cannot avoid the liability.

27. It is also the settled law so far as the third party is concerned the insurer cannot avoid the liability as the insurance policy issued in respect of the lorry was in force, the intimation has been given that the vehicle has been transferred and the intimation has been given much prior to the date of accident and merely because the transfer of policy is intimated later, the insurer cannot avoid the liability. There is material to show that the intimation has been given well in time and necessary fees has been remitted very much prior to the date of accident. Merely because the insurer took time to issue communication of transfer, it will not absolve the liability of the insurer and particularly in respect of third party claim. It is well settled law that the third party like the claimants cannot be made to suffer.

28. In the foregoing circumstances, the above appeal is dismissed with costs. Consequently connected CMPs are closed.

Internet:Yes
Index:Yes

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